

PAYMENT IN FULL, debt disputed, FINAL

if they cash it, and they have they have to stop the harassing letters

A third party can mail this with the account number on it:

Postal money order for ONE DOLLAR; PAY TO:

*This payment is paid FBO , =for the benefit of Suzie Q acct. _____
and the debt is disputed. VALIDATE THE DEBT*

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1. <http://www.town-usa.com/workplace/check.html>

A Check With a "Payment in Full" Endorsement

If you have a dispute with someone who owes you money and you accept a check for partial payment marked "payment in full," you might be agreeing to wipe out the rest of the debt.

A financial services company owed Sam \$5,000 for designing its logo and a brochure. When a dispute arose about the amount due, the company sent a \$3,000 check marked "**payment in full.**" Sam cashed the check, then asked the company for the rest of the money. The company told him it didn't owe him another dime. Sam consulted a lawyer, who told him the company was right.

A newsstand distribution company owed Amanda, publisher of a financial newsletter, \$20,000 for its purchase of the April 1996 issue. The distribution company disputed the amount owed. When it sent Amanda a check for \$14,000 marked "payment in full," Amanda consulted her lawyer. She wrote the words "without prejudice" on the back of the check, then cashed it. Unlike Sam, she eventually recovered the money she claimed was owed to her.

Both Sam and Amanda were paid with checks marked "**payment in full.**" The difference was Amanda was savvy enough to know there were legal consequences to cashing a "payment in full" check. With advice from her lawyer, she assessed her risks, made a decision on what to do and defeated the distribution company's attempt to wipe out the debt.

WHAT CASHING THE CHECK MEANS

As a general rule, if you have a dispute with someone who owes you money and you accept a partial payment

check marked "payment in full," you're agreeing to wipe out the balance of the debt. The theory is that a "payment in full" check is treated as an offer from the person issuing the check to enter into a new contract with the check's recipient. The terms of the new contract are that you will be paid the amount of the check and no more to settle your dispute. Your cashing of the check, having it certified by a bank or even stuffing it into a drawer for a long period of time might be viewed by the law as "satisfaction" of the debt.

Bear in mind that "payment in full" checks aren't used exclusively by the underhanded to slime out of their obligations. On the contrary, it's a long-established legal device recognized by most courts as convenient and informal way to settle commercial disputes. All one person has to do is send a settlement check marked "payment in full." The recipient can either send back the check-rejecting the settlement offer-or cash it and accept the settlement. The danger and abuse of the partial payment check arise only when you cash it without knowing the consequences.

WHAT TO DO WHEN YOU RECEIVE THE CHECK

The effect of the "payment in full" endorsement will vary depending on the facts of your case and the specific law of your state. In most cases, however, you have three options.

One, return the check and ask for one that doesn't say "payment in full."

Two, accept the check on the condition that it was sent-as a final, compromised settlement of your dispute.

Three, write your protest or "reservation of rights" on the back of the check, cash it and attempt to recover the balance.

You might have a strong case that your cashing of the check does not create a binding settlement if:

1. The amount owed was not in dispute or the sender of the check never told you the amount was disputed. Most courts hold that the "payment in full" check must be an offer to resolve a known dispute. If there's no dispute, acceptance of a "payment in full" check doesn't wipe out an undisputed claim.

2. The check fails to say "payment in full" clearly or fails to use other words that indicate the payment is being offered as full and final payment.

3. It's unclear which debt is to be paid in full. In one case, the court refused to cancel the balance of the debt because it was unclear which of several contracts was supposedly being paid in full. If the check you received is an effective "payment in full" settlement offer, your lawyer can advise you whether your state allows you to reserve your rights by properly protesting in writing on the back of the check. All 50 states have, in one version or another, a provision contained in the Uniform Commercial Code(UCC). Some states interpret Section 1-207 of the UCC to permit you to reserve your rights in writing and accept the check without losing the right to sue for the remaining balance. Other states allow you to reserve this right only under limited circumstances. Still other states have nixed this right altogether.

WHAT TO WRITE ON THE CHECK

How do you put your protest of reservation and unequivocally. Write "under protest" or "without prejudice" on the back of the check. In one case, the court said a person who wrote "without recourse" did not effectively reserve his right to sue. Consider crossing out the "payment in full" language. (Some banks may not cash an altered check.) After taking one more of these steps, you might consider sending a letter to the person who sent the check to reinforce that you have not accepted the "payment in full" offer.

In sum, be aware that when you receive a check in partial payment of a disputed claim marked "payment in full," the person sending the check is offering to compromise the claim. You have to make a decision. Send the check back, and you may never see that money again. Deposit the check as is, with no reservations of rights or cash the check while clearly indicating a reservation of rights.

May I suggest a fourth option? Call an attorney for advice on the law in your own state.

Source, Self Employed Professional May/June 1996

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